

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF PENNSYLVANIA
Johnstown Division

Gary E. Vaughn, Jr.,
Plaintiff,

v.

Borough of Portage, as a government agency;
Robert Koban, in his individual capacity;
Robert Fox, in his individual capacity;
George Wozniak, in his individual capacity;
Bruna Kissell, in her individual capacity;
Ronald Cadwallader, in his individual capacity;
Brent Kinley, in his individual capacity;
David Hayes, in his individual capacity;
David Rosamilia, in his individual capacity;
Ethan Yohn, in his individual capacity;
John Branick, in his individual capacity;
Defendants,

Case No: 3:23-cv-293

Jury Trial Requested

FILED

NOV 30 2023

CLERK U.S. DISTRICT COURT
WEST DIST OF PENNSYLVANIA

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER
TITLE 42 U.S. CODE §1983

I. The parties to this complaint:

A. The Plaintiff

Gary E. Vaughn, Jr.
701 Farren Street
Portage, PA 15946

Cambria County
814-254-6542 (Cell)
gvaughn1974@yahoo.com

B. The Defendants

1. Borough of Portage – Government Agency

721 Main Street
Portage, PA 15946

Cambria County
814-736-4330

2. Robert Koban – Individual Capacity

106 Koban Drive
Portage, PA 15946

Cambria County
814-242-4462

3. Robert Fox – Individual Capacity

900 Main Street
Portage, PA 15946

Cambria County
814-736-3888

4. George Wozniak – Individual Capacity

605 Prospect Street
Portage, PA 15946

Cambria County
Unknown Phone

5. Bruna Kissell – Individual Capacity

1009 Hopfer Avenue
Portage, PA 15946

Cambria County
814-421-6981

6. Ronald Cadwallader – Individual Capacity

721 Farren Street
Portage, PA 15946

Cambria County
Unknown Phone

7. Brent Kinley – Individual Capacity

1004 Webster Avenue
Portage, PA 15946

Cambria County
814-243-3995

8. David Hayes – Individual Capacity

929 Gillespie Avenue
Portage, PA 15946

Cambria County
814-525-9102

9. David Rosamilia – Individual Capacity

522 Turkey Valley Road
Hollidaysburg, PA 16648

Blair County
Unknown Phone

10. Ethan Yohn – Individual Capacity

716 Preston Street
Bedford, PA 15522

Bedford County
Unknown Phone

11. John Branick – Individual Capacity

1225 West High Street
Ebensburg, PA 15931

Cambria County
814-471-7506

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].”

The twelve named defendants are violating my First Amendment right to freedom of expression.

The Supreme Court has ruled that nude performance dancing are forms of expression that when restricted, require First Amendment review.

The defendants named above include, a government agency (Portage Borough), the elected Mayor of that agency, the appointed Manager of that Agency, five elected Council Members of that Agency, the Police Chief of that Agency, and two Police Officers employed by that Agency.

Each defendant acted under the color of a passed ordinance which completely prohibits specific and general businesses from operating in the limits of the Portage Borough, all against the First Amendment of the United States Constitution.

Each defendant listed above is tasked with passing and/or enforcing all local ordinances.

Each defendant above has been put on notice that the ordinances at issue are contrary to law, unenforceable, and is in violation of the First Amendment of the United States Constitution.

Each defendant above has had the opportunity to correct the violative ordinances but has been unwilling and has refused to take corrective action to cure the violation.

III. Statement of Claim

The Code of Ordinances for the Borough of Portage, Pennsylvania, located in Cambria County was adopted April 5, 1999, and has been supplemented and revised through April of 2023.

Specifically, Chapter 13, Part Two places restrictions on certain activities and businesses which fly in the face of the First Amendment.

Such prohibitions and restrictions include viewing adult-oriented motion pictures in the privacy of one's own home and restricting one's ability to barter, share or even give away obscene materials to other consenting adults.

Chapter § 202 restricts one's ability to "draw or utter" any obscene materials.

Chapter § 203 seeks to prevent any adult living within the limits of the Borough “to admit any other person to premises whereon there is exhibited, a motion picture show, live performance or any other presentation which, in whole or in part, depicts nudity, sexual excitement, sexual conduct or sadomasochistic abuse.”

This would seem to have the chilling effect of preventing anyone with guests from watching Rated R movies within the privacy of their own home.

Finally, Chapter § 205 of the Code, seeks to place a complete ban on otherwise legal businesses such as massage parlors, adult oriented businesses, like strip clubs, and adult toy stores, head or paraphernalia shops, rap centers, nude wrestling studios, sensitivity centers and escort bureaus.

It is important to note that the Agency known as Portage Borough has voted on and turned down requests for zoning in the area. Currently there are no zoning provisions within the Borough.

The ordinances, as passed, written, and as enforced are clearly in violation of the First Amendment of the United States Constitution.

Specifically, the Portage Borough Governmental Agency is negligent in adopting and passing the violative ordinances.

Robert Koban, the appointed Borough Manager, is tasked with managing the day-to-day operations of the Agency and has failed to ensure that no ordinance violates the First Amendment, even after notice was given.

Five elected council member officials and the elected Mayor are also tasked with protecting their Ward constituents and all have failed to take corrective measures by motioning or passing resolutions to correct and repeal the violative ordinances.

Three employed police officers are tasked with the enforcement of all ordinances, and none have taken any steps to protect the First Amendment.

IV. Request for Relief

Wherefore, your Plaintiff, Gary E. Vaughn, Jr., respectfully prays that this Honorable Court declare that the Ordinances listed in this complaint are violative of the First Amendment, deem the applicable Ordinances unenforceable, award a declaratory judgment in favor of Plaintiff, and award punitive damages in the amount of \$1,000,000 per defendant for a total of \$11,000,000.

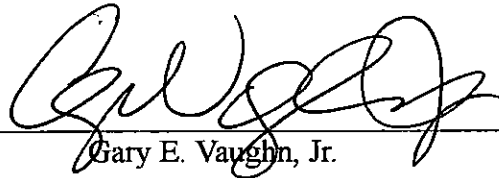
V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Executed this 28th day of November in the year of 2023.

Plaintiff:



Gary E. Vaughn, Jr.